APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,828	09/30/2003	John K. Alex	POU920030132US1	6637

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ART UNIT	PAPER NUMBER
2144	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Office Action Summary		Application No.	Applicant(s)	
		10/675,828	ALEX ET AL.	
		Examiner	Art Unit	
		Peling A. Shaw	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 February 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-24</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-24</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>30 September 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>09/30/2003</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1.   Preliminary amendment received on 03/17/2004 has been entered into record. Claims 1, 9

and 18 are amended. Claims 1-24 are currently pending.

Priority

2.   This application has no priority claim made. The filing date is 09/30/2003.

Specification

3.   Applicant is required to update the status (pending, allowed, etc.) of all parent priority

applications in the first line of the specification. The status of all citations of US filed

applications in the specification should also be updated where appropriate.

Claim Rejections - 35 USC § 112, second paragraph

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

Claims 1-8, 17-22 and 24 are rejected under 35 U.S.C. 112, second paragraph as following:

   a.   Claim 1 recites the limitation of "sending all instruction for the resource to perform

        an available action". It is not clear if one instruction of multiple instructions is (are)

        sent for one resource or multiple sources to perform one or multiple available action.

        Thus claim 1 and its dependent claims are rejected. For the purpose of applying art,

        multiple instructions, multiple resources and multiple actions are assumed.

   b.   Claim 4 recites the limitation of "sending an instruction for the resource to perform an

        available action". It is not clear to which resource is the instruction sent. Thus claim 4

        is further rejected. For the purpose of applying art, multiple instructions, multiple

        resources and multiple actions are assumed.

c. Claim 17 and 24 recite the limitation of "the resource harvester". There is insufficient

    antecedent basis for this limitation in these claims. Claims 17, 24 and their dependent

    claims 18-22 are thus rejected. For the purpose of applying art, claims 17 and 24 are

    read with the limitation of "a resource harvester" instead of "the resource harvester".

    Claim 18 is read with the limitation of "the resource harvester" instead of "a resource

    harvester".

Appropriate corrections are required.

Claim Rejections - 35 USC § 101 Utility

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 9-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to

non-statutory subject matter.

a. Claim 9 recites the limitation of "A computer readable medium ..." that is described

    in line 14 on page 13 through line 8 on page 14, including "the computer-readable

    medium 320 may comprise computer-readable information in a transitory state

    medium such as a network link and/or a network interface, including a wired network

    or a wireless network, that allow a computer to read such computer-readable

    information". The cited portion of the specification provides intrinsic evidence that

    applicant intends for the phrase of computer readable medium as used in the claims to

    include both "storage or memory media" and "transitory state medium". A transitory

    state medium may include a transmission medium, e.g. signal or carrier medium, used

    for implementing network link, network interface, wired network or wireless network

per applicant's specification in addition to anything else which would have reasonably been considered to be a transitory state medium by one of ordinary skill in the art. As such, the claim covers embodiments directed to a transitory state medium, per se. Since a transitory state medium may lack the necessary physical articles or objects necessary for it to be a machine or a manufacture within the meaning of 35 USC 101, and it's clearly not a series of steps or acts so as to be a process or combination of two or more substances so as to be a composition of matter, it fails to fall within a statutory category. Since the claim is not limited to embodiments eligible for patent protection, it is being rejected as non-statutory. Claim 9 and its dependent claims 10-16 are thus rejected. For the purpose of applying art, claim 9 is read as "A computer-readable medium as per a storage media comprising ...".

Appropriate corrections are required.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign
country or in public use or on sale in this country, more than one year prior to the date of
application for patent in the United States.

Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolff (US 6067545

A), hereinafter referred as Wolff.

a. Regarding claim 1, Wolff disclosed a method comprising: determining policy

definitions for an autonomic computing system (column 2, lines 37-41: pathway

between resources; column 12, lines 55-67: resource and connection information);

monitoring applicable resources for status information (column 11, lines 40-57: load-

balance monitor; column 24, lines 31-50: load-balance monitor); determining if the

autonomic computing system is at a desired end state (column 11, lines 40-53:

determine if the current I/O utilization has exceeded the configured load-balance

utilization threshold); and modifying resource states, by sending all instruction for the

resource to perform an available action, in response to determining the autonomic

computing system is not at the desired end state (column 13: receiving a command to

load-balance the aware-client from a node, redirect future I/O).

b. Regarding claim 2, Wolff disclosed the method of claim 1, wherein the policy

definitions can specify at least one of: an association between a resource and any

other set of resources (column 2, lines 37-41: pathway between resources; column 12,

lines 55-67: resource and connection information); and a desired state for a resource

or set of resources (column 10, lines 13-23: state of servers or cluster file system

nodes; column 27, line 66-column 28, line 15: master status with respect to the onset

of resources balancing).

c. Regarding claim 3, Wolff disclosed the method of claim 2, wherein the association

between a resource and any other set of resources comprise at least one of: a start

order among resources (column 6, line 47-column 7, line 4: allocation); a stop order

among resources (column 10, lines 25-38: command to fail-back and fail-over); a

prioritization between resources (claim 10: load balancing function prioritizing at

least two attributes; column 8, lines 10-34: group priority); a conditional activation of

policies (column 18, line 49-column 19, line 14: fail-over and fail back process); and

a location limitation of resources (column 20, lines 46-59: group, domain and

location).

d. Regarding claim 4, Wolff disclosed the method of claim 1, further comprising:

receiving resource status information from available resources; and continuing to

determine if the autonomic computing system is at the desired end state and

modifying the resource states, by sending an instruction for the resource to perform

an available action, until the autonomic computing system has reached the desired

end state (column 39, line 50-column 42, line 10: continue iteration for load

balancing).

e. Regarding claim 5, Wolff disclosed the method of claim 1, wherein the determining

policy definitions for an autonomic computing system comprises: determining a user-

defined system end state (column 62, line 50-column 64, line 9: GUI for use to select

and alternate); and determining a set of user-defined resource relationships (column 66, line 29-column 67, line 15: user/client display and control).

f. Regarding claim 6, Wolff disclosed the method of claim 1, wherein the determining policy definitions for an autonomic computing system further comprises harvesting implicit relationships between resources through self discovery (column 55, lines 23-56: device driver is used in discovery process).

g. Regarding claim 7, Wolff disclosed the method of claim 1, wherein the determining policy definitions for an autonomic computing system further comprises determining underlying relationships among members of a resource group (claims 12, 21 and 29: resource group).

h. Regarding claim 8, Wolff disclosed the method according to claim 7, wherein the members of the resource group are distributed within a heterogeneous cluster (claims 12, 21 and 29: storage devices and data sets; column 1, lines 38-50: heterogenous computing environment).

i. Claims 9-16 are of the same scope as claims 1-8. These are rejected for the same reasons as for claims 1-8.

j. Claims 17-22 and 24 are of the same scope as claims 1-2 and 6-8. These are rejected for the same reasons as for claims 1-2 and 6-8.

k. Claim 23 is of the same scope as claims 1 and 8. It is rejected for the same reasons as for claims 1 and 8.

Wolff disclosed all limitations of claims 1-24. Claims 1-24 are rejected under 35 U.S.C. 102(b).

Remarks

7.   The following pertaining arts are discovered and not used in this office action. Office

reserves the right to use these arts in later actions.

   a.   Henderson et al. (US 6058103 A) Network management system: condition

   b.   Bishop et al. (US 6983317 B1) Enterprise management system

   c.   Battou (US 20020174207 A1) Self-healing hierarchical network management system,

   and methods and apparatus therefor

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's

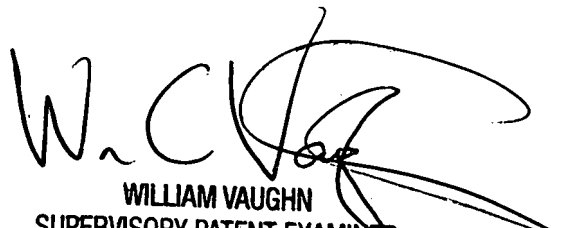disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Peling A. Shaw whose telephone number is (571) 272-7968. The

examiner can normally be reached on M-F 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for

the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the statu9s of an application may be obtained from the Patent

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applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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